A

ZUNG ZANG PLANTATION SDN BHD

v.

QUEK SIEW ENG & ORS

B HIGH COURT SABAH & SARAWAK, KOTA KINABALU
AZHAHARI KAMAL RAMLI JC
[CIVIL SUIT NO: 22-28-2009]
21 FEBRUARY 2014

C ***COMPANY LAW:*** *Directors - Offences by directors - Directors of company signed resolution without knowledge of creditor and managing director - Whether resolution passed directly affected company - Whether there was failure to protect interests of company - Whether there was intention to defraud creditors - Companies Act 1965, s. 304(1)*

D The defendants were directors of Granright Sdn Bhd ('Granright'), a company in bad financial shape which owed several banks amounting to RM650,000. In order to assist Granright, the managing director, PW1, managed to seek the assistance of the
E plaintiff. It was agreed upon that the plaintiff would appoint Granright as its sole agent for the sale of timber logs and Granright would be paid commission. However, a client, Yung Chen Wood ('YCW'), could not pay Granright for the timber logs supplied. Granright then instituted legal proceedings against YCW
F whereby a judgment in the sum of RM400,000 was given to Granright. Subsequently, there were negotiations between YCW and PW1 in which PW1 managed to secure two letters of guarantee to Granright, guaranteeing the repayment of the judgment debt. YCW also provided Granright with a title deed of
G an encumbered property as security for the satisfaction of the amount owing under the judgment debt and made further payments to Granright amounting to RM110,000. However, it was later revealed that the first to third defendants had wrongly signed a directors' resolution of Granright on 25 June 2004 which stated
H that all directors had agreed to a proposal by YCW dated 2 March 2004. The plaintiff and PW1 was not informed of this resolution. Further and unknown to the plaintiff and PW1, the first defendant had taken over the control of the legal proceedings against YCW by instructing the legal firm, Messrs Tan Pang Tsen
I & Co, who was also acting for YCW, to act on behalf of Granright in respect of dealings with YCW. In the meantime, due to the fact that Granright could no longer recover any money from YCW, the plaintiff initiated an action against Granright and

a judgment in the sum of RM292,804.27 was entered against Granright. It was also revealed that Messrs Tan Pang Tsen & Co had, on the instruction of the defendants, made various payments among others to ACPM Halex Sdn Bhd and the third defendant who were not creditors of Granright from the money paid by YCW. It was contended by the plaintiff that as a result of the wrongful payments made on the instruction of the defendants, Granright was now insolvent and was unable to make any payment to the plaintiff, its creditor. The plaintiff's action herein was founded under s. 304(1) of the Companies Act 1965. The plaintiff prayed for, *inter alia*, a declaration that the business of Granright Sdn Bhd had been carried out with intent to defraud the creditor, in particular the plaintiff and/or for a fraudulent purpose.

Held (allowing plaintiff's claim):

(1) It is the duty of this court to determine whether a case under s. 304(1) of the Act had been made out *ie*, whether the business of the company had been carried on with intent to defraud the creditors of the company. The resolution passed on 25 June 2004 was also the business of the company. It was done by the board of directors of Granright (not withstanding the fact that PW1 was left out from the said meeting) and the resolution passed had directly affected the company. Naturally, the passing of the said resolution formed part and parcel of the business of the company. (paras 41 & 42)

(2) PW1 being the Managing Director of Granright had not been notified about the said board meeting on 25 June 2004. There was no explanation by DW1 as to why PW1 was left out in the decision making process. Further, DW1 admitted that the proposal made by YCW concerning the settlement of the judgment sum obtained by Granright had been agreed upon prior to the said board meeting. Such important decision which had the direct impact on Granright was made hastily. Based on the said resolution, DW1 had taken charge of the affairs of Granright on matters concerning the repayment of the judgment sum. There was no proof that Granright had fully collected the judgment debt and paid the amount owing to the plaintiff. To the contrary, there was evidence that DW1 had instructed Messrs Tan Pang Tsen & Co to make various payments to parties who were not the company's creditors. (paras 44, 45 & 46)

(3) There was no evidence which showed that DW1 had taken steps to realise the security which was given by YCW *ie*, the said land, to secure the payment of the judgment sum. The value of the said land was RM600,000 and it was surprising that DW1 did not take any action to execute the prohibitory order that was lodged on the said land. Granright had now become insolvent. DW1 thus had failed to protect the interest of the said company. Taken in its totality, the evidence showed that the business of Granright had been carried out by DW1 (acting on the resolution approved on 25 May 2004) with intent to defraud its creditor, the plaintiff. Hence, the plaintiff had successfully proved its case. (paras 47, 48 & 50)

Case(s) referred to:

Kawin Industrial Sdn Bhd (In Liquidation) v. Tay Tiong Soong [2009] 1 MLJ 723 HC ***(refd)***

Premium Vegetable Oils Bhd v. ICG Systems Sdn Bhd & Ors [2006] 7 CLJ 364 HC ***(refd)***

Siow Yoon Keong v. H Rosen Engineering BV [2003] 4 CLJ 68 CA ***(refd)***

Legislation referred to:

Companies Act 1965, ss. 217, 304(1)

For the plaintiff - Chung Jiun Dau; M/s Chung & Assocs
For the defendant - Wong Shang Len; M/s Tan Pang Tsen & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Azhahari Kamal Ramli JC:

[1] In its statement of claim which is now reproduced in *verbatim*, the plaintiff prays for the following orders:

(a) A declaration that the business of Granright Sdn Bhd had been carried out with intent to defraud the creditors of Granright Sdn Bhd in particular the plaintiff, and/or for a fraudulent purpose;

(b) A declaration that the appellant was knowingly a party to the carrying on of the business of Granright Sdn Bhd with intent to defraud the creditors of Granright Sdn Bhd and in particular, the plaintiff and/or for a fraudulent purpose and shall be personally responsible, without any limitation of liability, for the debts or other liability of Granright Sdn Bhd to the plaintiff.

(c) An order that first, second and third defendants jointly and severally pay to the plaintiff the amounts owing to the plaintiff under the judgment dated 15 August 2007 pursuant to Suit No. S-22-36 of 2004 in the High Court of Sabah and Sarawak at Sandakan;

(d) Cost; and

(e) Any other or further relief as the court deems fit.

[2] The plaintiff's action herein is founded under s. 304(1) of the Companies Act 1965 which provides:

> If in the course of the winding up of a company or any proceedings against a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

[3] In short s. 304(1) above makes any person who knowingly causes the carrying on of the business of a company with intent to defraud its creditors or for any fraudulent purposes personally liable for the debt of the company and the court may declare that such person personally liable or responsible for the debts of the company.

Case For The Plaintiff

[4] The defendants are the directors of a company called Granright Sdn Bhd ("Granright") which activities involved in trading including selling of sawn timber. Due to the 1997 economic crisis Granright's business suffered and it was in a bad financial shape.

[5] In early 1999 Granright owed several banks amounting to about RM650,000.

[6] In order to assist Granright, one Mathew Kwan Hung Cheong ("PW1") managed to seek the assistance of the plaintiff. It was agreed upon that the plaintiff would appoint Granright as its sole agent for the sale of timber logs and Granright will be paid

commission. Through this arrangement Granright managed to survive and one of its client was Yung Chen Wood Industry Sdn Bhd ("Yung Chen Wood").

[7] However it appears that Yung Chen Wood also could not pay Granright for the timber logs supplied to them and Granright then instituted legal proceedings against Yung Chen Wood and three (3) individuals in S-22-61-2001. The High Court at Sandakan give judgment in the sum of RM400,000 for Granright with cost and interest on 3 March 2003.

[8] Subsequently there were negotiation between Yung Chen Wood's representative and PW1 whereby PW1 managed to secure two (2) letters of guarantee dated 2 March 2004 to Granright guaranteeing the repayment of the judgment debt. Yung Chen Wood also provided Granright with a title deed of an unencumbered property as security for the satisfaction of the amount owing under the judgment debt. Yung Chen Wood also made further payments to Granright amounting RM110,000 whereby receipts were issued by Granright acknowledging the payments. Granright also lodged a prohibiting order against the said land.

[9] Subsequently Granright proceeded with execution proceedings and obtained a preliminary objection on 8 October 2004 against the property of Yung Chen Wood.

[10] However it was later revealed that the first – third defendants had wrongly signed a directors' resolution of Granright Sdn Bhd on 25 June 2004 which stated that all directors had agreed to a proposal by Yung Chen Wood dated 2 March 2004. The resolution also stated that the first defendant would be dealing with all matters in respect of the payment proposed by Yung Chen Wood. The plaintiff and (PW1) was not informed of this resolution.

[11] Further, and unknown to the plaintiff and PW1, the first defendant had taken over the control of the legal proceeding against Yung Chen Wood by instructing Messrs Tan Pang Tsen & Co, who was also acting for Yung Chen Wood to act on behalf of Granright Sdn Bhd in respect of dealings with Yung Chen Wood.

[12] In the meantime due to the fact that Granright could no longer recover any money from Yung Chen Wood, the plaintiff initiated an action against Granright in S-22-36-2004 and judgment in the sum of RM292,804.27 was entered against Granright.

[13] Back to Granright affairs, it was also revealed that Messrs Tan Pang Tsen & Co had, on the instruction of the defendants, made various payments among others to ACPM Halex Sdn Bhd and the third defendant who are not creditors of Grandright from the money paid by Yung Chen Wood.

[14] It was contended by the plaintiff that as a result of the wrongful payments made on the instruction of the defendants, Granright is now insolvent and has been unable to make any payment to the plaintiff, its creditor.

The Defendants' Case

[15] On the other hand, the defendants contended that PW1 was the person in charge of the business of Granright with the plaintiff. It was averred that PW1 was also a shareholder in the plaintiff company. They alleged that unknown to the defendants, PW1's wife ("PW2") had misappropriated the sum of RM110,000 of the judgment sum paid by Yung Chen Wood without paying into the account of Granright. And it was upon the discovery of this fact that a directors' meeting was called on 29 June 2004 to discuss about this issue and it was resolved that the first defendant was authorised to deal with correspondences, legal and banking matters related to the payment of Yung Chen Wood to avoid any further inappropriate acts of the PW1 and PW2. Police report was also lodged against the PW2.

[16] It was contended by the defendants that Granright agreed to accept Yung Chen Wood's proposal to waive interest and cost because Yung Chen Wood at that time was at the brink of being wound up and if the offer is not accepted there would be no payment from Yung Chen Wood.

[17] The defendants impliedly admitted that they have used the repayment made by Yung Chen Wood to pay the third defendant, ACPM Halex Sdn Bhd and Messrs Tan Pang Tsen & Co.

A **The Issue**

[18] The only issue in this trial is whether the defendants especially the first defendant had been carrying on the business of the company, Granright, with the intention to defraud its creditor
B the plaintiff or any fraudulent purpose.

The Law

[19] In so far as the application of s. 304(1) is concerned, the Court of Appeal in the case of *Siow Yoon Keong v. H Rosen*
C *Engineering BV* [2003] 4 CLJ 68 at pp. 77-78; [2003] 4 MLJ 569 at p. 579 had stated that:

> In the context of the facts of this case, the subsection provides that if "it appears that any business of the company has been carried on with intent to defraud creditors of the company … or
D for any fraudulent purpose, the court on the application of ... any creditor … of the company if it thinks proper so to do declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts ... of
E the company as the court direct".
>
> The section is very clear. It is a matter of making a finding of facts and decide whether the facts fit the provision of the subsection or not.

F **[20]** Hence the issue to be ascertained by this court is quite straightforward namely whether on the evidence adduced by the witness, the present case falls within the ambit of s. 304(1). In doing so, it is incumbent upon this court to decide whether "any business of the company has been carried on with intent to
G defraud the creditors of the company or for any fraudulent purpose".

[21] In so far as the burden of proof is concerned, in the case of *Siow Yoon Keong v. H Rosen Engineering BV* (*supra*) it was stated
H at p. 80 (CLJ); p. 582 (MLJ) that:

> Note that the section only uses the term "if it appears" which indicates that a lower degree of proof is required …

[22] Further, in the case of *Kawin Industrial Sdn Bhd (In*
I *Liquidation) v. Tay Tiong Soong* [2009] 1 MLJ 723 at pp. 732-733 it was decided that:

> It is not necessary in order to establish fraud that the creditors were intact defrauded. An intention to defraud is sufficient. In this respect, an intent to defraud is an intent to deprive creditors, or some creditors, of an economic advantage or inflict upon them some economic loss.

[23] As such the plaintiff need not prove fraud beyond reasonable doubt. However I am of the opinion that such standard of proof should not be lesser than the usual balance of probability.

[24] And in so far as the word "creditor" is concerned, Ramly Ali J (as he then was) in the case of *Premium Vegetable Oils Bhd v. ICG Systems Sdn Bhd & Ors* [2006] 7 CLJ 364; [2006] 7 MLJ 39 held that:

> ... the word "creditor" as being used in s. 304 should be interpreted in the widest sense and that it included all persons having pecuniary claim against the company ... and the creditor should be a person who could enforce its claim against the company by an action of debt and need not establish a finding of liability before becoming a creditor.

[25] Further His Lordship while commenting on the word "creditor" in s. 217 of the Act that which includes a "contingent or prospective creditor" opined that, applying the general rule of interpretation of statutes that the same term or expression used in different parts of a statute unless the context otherwise requires, the term "creditor" in s. 304 must also be taken to also mean to include "contingent or prospective creditor".

[26] At p. 373 (CLJ); p. 47 (MLJ) para. 23, His Lordship concludes that:

> The above authorities clearly say that a plaintiff who has a pecuniary claim against the company is a "prospective creditor" to the company and by virtue of s. 217 of the Companies Act 1965, is also a 'creditor' for the purpose of winding-up process of the company including for the purpose of s. 304 of the Act. Being a creditor (or prospective creditor) the plaintiff have the necessary *locus standi* to institute an action against the fourth Defendant under s. 304(1) of the Companies Act 1965.

[27] Hence, I am of the view that the plaintiff in this case is a creditor for Granright for the purpose of s. 304(1).

A **The Evidence**

[28] In his witness statement (PWS-1), PW1 who was the managing director of Granright testified that the plaintiff had been assisting Granright in its business by appointing it as the plaintiff's sale agent for timber logs whereby the plaintiff was to supply Granright with timber logs and Granright would then sell them. By this arrangement Granright would earn a commission of 1% to 3%. However one of Granright's customer Yung Chen Wood Industry Sdn Bhd (Yung Chen Wood) had failed to make full payments of the purchase price of the timber log resulting in a suit being filed in Civil Suit No. S-22-61-2001 between Granright and Yung Chen Wood. Judgment was entered against Yung Chen Wood on 3 March 2003 for the sum of RM400,000 with interest of 1.5% per month. It was also shown in evidence that the plaintiff had forwarded the cost of the legal proceedings, incurred by Granright. Also it was also shown that PW1 had been authorised to commence legal proceedings against Yung Chen Wood.

[29] Subsequently pursuant to the negotiation between Granright and Yung Chen Wood it was agreed that two (2) letters of guarantees dated 2 March 2004 were issued to Granright guaranteeing the repayment of the judgment debt (pp. 37 & 38 of plaintiff's bundle) and that Yung Chen Wood had also provided the original of a land title known as TL 07577329 (the said land) owned by Yung Chen Wood as security for the satisfaction of the amount owing under the judgment. It was also shown that Yung Chen Wood made three (3) payments on 3 March 2004, 19 April 2004 and 26 April 2004 totalling RM110,000 and receipts were issued by Granright (see pp. 39, 40 & 41 of Bundle D). Upon receipt of these payments, Granright then paid the plaintiff the said amount as Granright was still owing money to the plaintiff. Receipts were issued by the plaintiff (see pp. 42 and 43 of Bundle D).

[30] Since Yung Chen Wood did not make any further payments, Granright then issued a prohibitory order against the said land. On the other hand, Granright still owed the plaintiff the sum of approximately RM400,000.

[31] Then, unknown to the plaintiff as well as PW1 who was then the managing director of Granright, the defendants had on 25 June 2004 signed a directors' resolution stating that all directors had agreed to a proposal dated 2 March 2004 by Yung

Chen Wood. It was also resolved that the first defendant will be dealing with all correspondence, legal and banking matters in respect of the re-payment proposal by Yung Chen Wood. It was PW1's evidence that the first defendant had met up with Yung Chen Wood and persuaded them not to make any more payments.

[32] PWI further testified that as the managing director of Granright, he was not aware of any proposal dated 2 March 2004 from Yung Chen Wood, the fact that he had confirmed with Messrs Peter Lo & Co solicitors for Granright. PW1 also testified that he was not informed of the directors' meeting of Granright called on 25 June 2004 and only learnt about the resolution after the first defendant wrote a letter dated 28 June 2004 on behalf of Granright to Messrs Peter Lo enclosing the said resolution (pp. 44 - 45 of Bundle D). PW1 considered this resolution as improper and invalid as the meeting was not properly convened and that he had not signed the said resolution (p. 4 of Bundle D). The said resolution had apparently cause Granright to waive the interest and legal fee as well as a portion of the amount owed by Yung Chen Wood to Granright.

[33] It was PW1's evidence that the decision made by the defendants (directors of Granright) to accept the proposal from Yung Chen Wood was made without regard to and was against the best interest of Granright and its creditors. It was also shown that the defendants had instructed Messrs Tan Pang Tsen & Co (who was also solicitor for Yung Chen Wood) to make payment, to ACPM Halex Sdn Bhd, the third defendant including the said legal firm from the amounts paid by Yung Chen Wood.

[34] It was also in evidence that the first and second defendants are the directors of APCM Halex Sdn Bhd who are not the creditor of Granright. Further, Granright did not owe any money to Messrs Tan Pang Tsen & Co.

[35] Subsequently the plaintiff instituted an action against Granright in Civil Suit No. S-22-36 of 2004 and judgment was entered in the sum of RM292,804.27. Unfortunately the plaintiff could not recover any payment from Granright as it had since insolvent.

[36] It must be noted that the evidence PW1 was not seriously challenged by the defendants. He maintained that the sum of RM110,000 received from Yung Chen Wood had been accounted for by way of a receipt by Granright. He disagreed that his wife

had taken the said sum but admitted that Granright is his family business. He also denied that there was a board of directors' meeting of Granright on 28 July 2004 whereby PW1 had allegedly proposed that Granright should use the money received from Yung Chen Wood to pay RM292,804.27 to the plaintiff first.

[37] PW2 (the wife of PW1) was called mainly for the purpose of rebutting the defendants' allegation that she had taken the sum of RM110,000 received from Yung Chen Wood for her personal use. She denied taking the said amount of money for her personal use. She maintained that receipts were issued when she received the said payments from one Wang Yen Chin @ Shirrly Wong on 3 March 2004, 19 April 2004 and 26 April 2004. Again, PW2's evidence was not seriously challenged during cross-examination. She admitted that a police report was lodged against her in respect of the alleged misappropriation of the money received from Yung Chen Wood.

Evidence For The Defendants

[38] The first defendant testified for the defendants. He told the court that PW2 had misappropriated the money received from Yung Chen Wood in the sum of RM110,000 because Granright had not received the said payment and a police report had been lodged. It was based on this fact that he ("DW1") had been assigned to take charge of the affairs of Granright. DW1 admitted that Granright had agreed to accept the proposal from Yung Chen Wood to waive the interest on the judgment sum and cost because at that particular time Yung Chen Wood was under receivership and its directors have no property to honour the letter of guarantee for the payment of the judgment. DW1 further testified that Granright's holding company and creditor (ie, Approfit Holding Sdn Bhd) had directed Granright to make payments to ACPM Halex Sdn Bhd, the third defendant as well as Messrs Tan Pang Tsen & Co.

[39] In cross-examination DW1 admitted that the resolution dated 25 June 2004 was incorrect because PW1, the managing director of Granright was not part of the decision making process. It was also admitted by DW1 that the proposal made by Yung Chen Wood was not brought to PW1's attention and was not produced in court. It was also admitted by DW1 that the proposal made by Yung Chen Wood had been agreed upon before the board resolution on 25 June 2004. DW1 agreed that

he was not aware about the land that had been pledged by Yung Chen Wood as security for its payment because he had not checked with PW1. DW1 admitted that Granright had not paid the judgment sum to the plaintiff.

[40] With regards to the alleged misappropriation of the money received from Granright by PW2, DW1 agreed that he did not commence any legal proceeding against her to recover the said sum.

Finding

[41] Based on the above evidence, it is the duty of this court to determine whether a case under s. 304(1) of the Act has been made out, ie, whether the business of the company has been carried on with "intent to defraud the creditors of the company…". What constitute the business of the company is a question of fact and there should not be any definite description that should be assigned to it. In the case of *Kawin Industrial Sdn Bhd (In Liquidation) v. Tay Tiong Soong* (*supra*) at p. 733 the learned trial judge had given some examples of "business of the company" derived from decided cases which include obtaining credit for the company and collection of assets acquired in the course of business and the distribution of proceeds thereof in payment of debts.

[42] In the present case, I am of the opinion that the resolution passed on 25 June 2004 is also the business of the company. It was done by the board of directors of Granright (not withstanding the fact that PW1 was left out from the said meeting) and the resolution passed has directly affected the company. Naturally, the passing of the said resolution formed part and parcel of the business of the company.

[43] The next issue to be determined here is whether the business of the company was carried out "with intent to defraud creditors … or for any fraudulent purposes".

[44] First of all, PW1 being the managing director of Granright had not been notified about the said board meeting on 25 June 2004. There is no explanation by DW1 as to why PW1 was left out in the decision making process. In the course of the trial, I have ordered that certain paragraph in the witness statement of DW1 to be disregarded on the ground of hearsay which includes the purported explanation on the absence of PW1.

[45] Be that as it may it was admitted by DW1 that, besides admitting that there was no agenda for the said meeting, the proposal made by Yung Chen Wood concerning the settlement of the judgment sum obtained by Granright had been agreed upon prior to the said board meeting. Such important decision which had the direct impact on Granright was made hastily and the only inference that could be made is that the defendants had anticipated objections from PW1, who had been instrumental in ensuring Granright to recover the judgment sum. It is not disputed that PW1 had managed to obtain two (2) letters of guarantee from the directors of Yung Chen Wood guaranteeing the repayment as well as obtaining the land title to secure the payment of the judgment sum.

[46] Based on the said resolution, DW1 had taken charge of the affairs of Granright on matters concerning the repayment of the judgment sum. However, notwithstanding the fact that Granright had waived the payment of interest and costs on the judgment debt, there is no proof that Granright had fully collected the judgment debt and paid the amount owing to the plaintiff. To the contrary there is evidence that the DW1 had instructed Messrs Tan Pang Tsen & Co to act for Granright in place of Messrs Peter Lo & Co who had been in charge of the matter even though the said firm is also acting for Yung Chen Wood. And thereafter, following the defendants' instruction, Messrs Tan Pang Tsen & Co had made various payments including to ACPM Halex Sdn Bhd and the third defendant who are not the company's creditor.

[47] Above all, there is also no evidence which show that DW1 had taken steps to realise the security which was given by Yung Chen Wood ie, the said land, to secure the payment of the judgment sum. The value of the said land according to PW1, was about RM600,000 and it is quite surprising that DW1 who is, pursuant to the resolution passed on 25 June 2004, in charge of the affairs of Granright did not take any action to execute the prohibitory order that was lodged on the said land. It is quite unfortunate that Granright has now become insolvent and could not pay the plaintiff and based on the above evidence, DW1 had failed to protect the interest of the said company.

[48] Taken in its totality the evidence shows that the business of the company (Granright) had been carried out by DW1 (acting on the resolution approved on 25 June 2004) with intent to defraud its creditor, the plaintiff.

[49] I pause here to state that I have considered the issue raised by the defendants with regard to the alleged misappropriation of Granright money by PW2, namely RM110,000 received from Yung Chen Wood. It would appear that besides the police report lodged, there is no evidence to show that this allegation is not baseless. There was no other action taken by the defendants to recover the said amount. To the contrary the plaintiff, through PW2 had testified that when Yung Chen Wood made the payments on 3 March 2004, 19 April 2004 and 26 April 2004 receipts were issued by Granright, and subsequently paid to the plaintiff. Receipts were also issued by the plaintiff shown at pp. 39 to 41 of Bundle D. Since there is no evidence to show that Yung Chen Wood had made further payments besides on the three (3) dates above, I am of the opinion that this issue is baseless and does not justify the defendants' act in convening the board meeting on 25 June 2004.

[50] Based on the aforesaid reasons, I am satisfied that the plaintiff has successfully proved its case. The conduct of the defendants in approving the directors' resolution on 25 June 2004, the failure to realise the security obtained by the PW1 and the payment made to other parties other than the plaintiff using the money obtained from Yung Chen Wood show their intention to defraud the plaintiff.

[51] I allow the claim and enter judgment in terms of the statement of claim with cost of RM30,000.